IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRI. WRIT PETITION NO. 1117 OF 2004

Shri Ashok Bhagwan Suryawanshi ..Petitioner.

V/s.

The State of Maharashtra ..Respondent.

Through Jail
Shri B.G. Tangsali (appointed) for the Petitioner.
Shri V.B.Konde-Deshmukh, APP for Respondent- State.

CORAM : A.M.KHANWILKAR, J.
DATED : FEBRUARY 28, 2005

PC :-

1. Heard.

2. Rule. Rule made returnable forthwith, by consent. Mr. V.B. Konde -Deshmukh waives notice for the Respondent. As short question is involved, the petition is taken up for final disposal forthwith by consent.

3. This petition is through jail. The petitioner has questioned the order passed by the Deputy Inspector General (Prison) dated 24.11.2003, rejecting the petitioner's request for release on furlough leave. The request has been rejected mainly on the ground that the petitioner had over stayed his leave for 60 days on the earlier occasion. It is also

mentioned that there is adverse police report against the petitioner.

4. Having heard the counsel for the parties and going through the record, it appears that the adverse police report is on the basis that the petitioner had over stayed his leave period on the earlier occasion. In other words, the ground on which the furlough leave, as requested by the petitioner, is rejected, is that the petitioner had overstayed for 60 days on the earlier occasion. Record indicates that the petitioner was punished in that behalf, in the proceedings under the Prison Act for the said lapse. If it is so, that reason alone cannot be made the basis to reject the petitioner's request for furlough leave on the subsequent occasion. It is seen from the record, as can be discerned from the police report that the surety of the petitioner is his uncle and he has taken the responsibility of the petitioner if released on furlough leave. The report also records that there is no apprehension from the petitioner, if released. If it is so, in my opinion, this petition ought to succeed by setting aside the impugned order and instead directing the authorities to release the petitioner on furlough leave as per rules. Ordered accordingly.

5. As this petition is filed through jail, copy of this order be forwarded to the petitioner, who is presently in jail.

6. The court expresses word of appreciation for the able assistance given by Shri Tangsali, as "amicus curiae".

7. Ordered accordingly.

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